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**2020 Edition**

# Vexatious Litigation in Connecticut

A Guide to Resources in the Law Library

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Judge Support Services, Law Library Services Unit*

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# Introduction

A Guide to Resources in the Law Library

- “We begin our discussion by setting forth the elements of the common-law tort of vexatious litigation. **Our Supreme Court has stated:** ‘In a malicious prosecution or vexatious litigation action, it is necessary to prove want of probable cause, malice and a termination of [the] suit in the plaintiffs’ favor.... [Establishing] a cause of action for vexatious suit requires proof that a civil action has been prosecuted not only without probable cause but also with malice.... It must also appear that the litigation claimed to be vexatious terminated in some way favorable to the **defendant therein.**’ (Citations omitted; emphasis added; internal quotation marks omitted.) [QSP, Inc. v. Aetna Casualty & Surety Co.](#), 256 Conn. 343, 361, 773 A.2d 906 (2001); see also [Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Cole](#), 189 Conn. 518, 538, 457 A.2d 656 (1983); [Vandersluis v. Weil](#), 176 Conn. 353, 356, 407 A.2d 982 (1978); D. Wright, J. Fitzgerald & W. Ankerman, Connecticut Law of Torts (3d Ed. 1991) § 162, p. 432.

We now identify the elements of statutory vexatious litigation. Section 52-568 provides: ‘Any person who commences and prosecutes any civil action or complaint against another, in his own name or the name of others, or asserts a defense to any civil action or complaint commenced and prosecuted by another (1) without probable cause, shall pay such other person double damages, or (2) without probable cause, and with a malicious intent unjustly to vex and trouble such other person, shall **pay him treble damages.**’ **This court has stated that ‘[t]he elements of a common-law or statutory cause of action for vexatious litigation are identical.’** [Norse Systems, Inc. v. Tingley Systems, Inc.](#), 49 Conn. App. 582, 596, 715 A.2d 807 (1998); see also [Frisbie v. Morris](#), 75 Conn. 637, 639, 55 A. 9 (1903); [Hebrew Home & Hospital, Inc. v. Brewer](#), 92 Conn. App. 762, 766-67, 886 A.2d 1248 (2005); [Falls Church Group, Ltd. v. Tyler, Cooper & Alcorn, LLP](#), 89 Conn. App. 459, 467, 874 A.2d 266 (2005), *aff’d*, 281 Conn. 84, 912 A.2d 1019 (2007); [Shurman v. Duncan](#), 14 Conn. Supp. 293, 294 (1946).” [Bernhard-Thomas Building Systems, LLC v. Dunican](#), 100 Conn. App. 63, 68-69, 918 A.2d 889, 893-894 (2007), *aff’d*, 296 Conn. 548 (2008).

- “The torts of malicious prosecution and vexatious litigation are similar because in both types of action ‘the claimed impropriety arises out of previous litigation.’ [Blake v. Levy](#), 191 Conn. 257, 262, 464 A.2d 52. The principles governing both torts are based on the ‘competing policies of deterrence of groundless litigation and protection of good faith access to the courts.’ [Blake v. Levy](#), *supra*, 263, 464 A.2d 52.” [Colli v. Kamins](#), 39 Conn. Supp. 75, 76, 468 A.2d 295 (1983).

# Section 1: Vexatious Suits in Connecticut

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic resources relating to the tort of vexatious lawsuits in Connecticut.

## **SEE ALSO:**

- [Frivolous Lawsuits in Connecticut](#)
- Malicious Prosecution in Connecticut ([Section 2](#))
- Abuse of Process in Connecticut ([Section 3](#))

## **DEFINITIONS:**

- “[T]he probable cause standard applied to a vexatious litigation action against a litigant is a purely objective one.’ [Falls Church Group, Ltd. v. Tyler, Cooper & Alcorn, LLP](#), supra, 281 Conn. at 95, 912 A.2d 1019. That standard is defined as ‘a bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a man of ordinary caution, prudence and judgment, under the circumstances, in entertaining it.... Probable cause is the knowledge of facts, actual or apparent, strong enough to justify a reasonable man in the belief that he has lawful grounds for prosecuting the defendant in the manner complained of.... Thus, in the context of a vexatious suit action, the defendant lacks probable cause if he lacks a reasonable, good faith belief in the facts alleged and the validity of the claim asserted.’ (Internal quotation marks omitted.) Id., at 94-95, 912 A.2d 1019. Our Supreme Court has described that standard as a ‘lower threshold of probable cause’ that permits ‘attorneys and litigants to present issues that are arguably correct, even if it is extremely unlikely that they will win....’ (Internal quotation marks omitted.) Id., at 103-104, 912 A.2d 1019. As the court emphasized, ‘[p]robable cause may be present even where a suit lacks merit.’ (Internal quotation marks omitted.) Id., at 103, 912 A.2d 1019.” [Rockwell v. Rockwell](#), 178 Conn. App. 373, 390, 175 A.3d 1249 (2017).
- “A vexatious suit is a type of malicious prosecution action, differing principally in that it is based upon a prior civil action, whereas a malicious prosecution suit ordinarily implies a prior criminal complaint. To establish either cause of action, it is necessary to prove want of probable cause, malice and a termination of suit in the plaintiff’s favor.” [Vandersluis v. Weil](#), 176 Conn. 353, 356, 407 A.2d 982, 985 (1978).
- “In suits for vexatious litigation, it is recognized to be sound policy to require the plaintiff to allege that prior litigation terminated in his favor. This requirement serves to discourage unfounded litigation without impairing the presentation of honest but uncertain causes of action to the courts.” [Zeller v. Consolini](#), 235 Conn. 417, 424, 666 A.2d 64, 67 (1995).

- “[I]t is well settled that equity may enjoin vexatious litigation . . . This power of equity exists independently of its power to prevent a multiplicity of actions. It is based on the fact that it is inequitable for a litigant to harass an opponent not for the attainment of justice, but out of malice . . . To be vexatious, litigation must be prosecuted not only without probable cause but also with malice.” (Citations omitted.) [Bridgeport Hydraulic Co. v. Pearson](#), 139 Conn. 186, 194, 91 A.2d 778, 781 (1952).

### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2019).  
[Chapter 925](#). Statutory Rights of Actions and Defenses  
 § [52-568](#). Damages for groundless or vexatious suit or defense.  
 § [52-568a](#). Damages for groundless or vexatious **suit against the owner or operator of a “pick or cut your own agricultural operation.”**

### **LEGISLATIVE:**

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report’s** publication. Current law may be different from what is discussed in the reports.

- Christopher Reinhart, *Vexatious Litigation and Sanctions Against Attorney*. Office of Legislative Research Report, [2008-R-0101](#). (January 30, 2008).

### **FORMS:**

- 3A *Connecticut Practice Series: Civil Practice Forms 4th*, by Joel M. Kaye and Wayne D. Effron, 2004, with 2020 supplement, Thomson West (also available on Westlaw).  
[Form 804.11. Vexatious Suit](#)
- 16A *Connecticut Practice Series: Connecticut Elements of an Action*, Thomas B. Merritt, 2020, Thomson West (also available on Westlaw).  
 Chapter 15. Malicious Prosecution/Vexatious Litigation  
 § 15:10. Sample trial court documents—Sample complaint  
 § 15:11. —Sample answer containing affirmative defense
- *Connecticut Torts: The Law and Practice*, by Frederic S. Ury and Neal L. Moskow, Matthew Bender, 2d ed., 2015, with 2020 supplement.  
 Chapter 12. Bringing Intentional Tort Claims  
 § 12.03. Bringing a claim for misuse of the legal system  
 [17] Checklist for malicious prosecution/vexatious litigation claims

[19] Forms for malicious prosecution/vexatious litigation claims  
Form 12.03.1 Complaint—malicious prosecution and vexatious litigation

**JURY INSTRUCTIONS:**

- [Connecticut Judicial Branch Civil Jury Instructions](#)  
Part 3: Torts  
3.13. Intentional Torts  
3.13-5. Vexatious Suit - Claim under General Statutes § 52-568  
3.13-6. Vexatious Suit - Claim at Common Law  
3.13-9. Defense of Good Faith Reliance Upon Advice of Counsel

**CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Greene v. Keating](#), 197 Conn. App. 447, 449, 231 A.3d 1178 (2020). "On appeal, Greene claims that the court improperly concluded that, although she had established one of her vexatious litigation claims against the defendant, the defendant was entitled to judgment in its favor because Greene failed to prove the amount of her damages. Specifically, Greene claims that the court improperly concluded that she failed to present evidence that would allow the court reasonably to calculate damages in the form of attorney's fees. We affirm the judgment of the trial court.
- [Tatoian v. Tyler](#), 194 Conn. App. 1, fn.21, 220 A.3d 802 (2019). "We do not reverse the court's judgment in favor of the defendants with respect to count one of the plaintiff's complaint in the present action, in which he brought a claim of common-law vexatious litigation, and count three of the plaintiff's complaint in the present action, in which he stated a claim under § 52-568 (2), pursuant to which the plaintiff would have been entitled to treble damages. To prevail in these causes of action, a plaintiff must prove that a defendant acted with a malicious intent."
- [Metcalf v. Fitzgerald](#), 333 Conn. 1, 30, 214 A.3d 361 (2019). "Accordingly, the plaintiff's state law CUTPA and vexatious litigation claims are in conflict with the Bankruptcy Code provisions regarding sanctions for abuse of process and, thus, are preempted. The trial court properly dismissed these claims for lack of subject matter jurisdiction."
- [Rockwell v. Rockwell](#), 178 Conn. App. 373, 390, 175 A.3d 1249, 1259 (2017). "The remaining question, then, is whether undisputed facts exist in the record on which the court could conclude that the defendant possessed probable cause to prosecute the 2009 action for breach of contract. At the outset, we note that, in an action for vexatious litigation, the burden rests with the plaintiff to prove that the defendant lacked probable cause to prosecute a prior action. *Harris v. Bradley Memorial Hospital & Health Center, Inc.*, 296 Conn. 315, 330, 994

A.2d 153 (2010); see also *Zenik v. O'Brien*, 137 Conn. 592, 597, 79 A.2d 769 (1951) (“[a]lthough want of probable cause is negative in character, the burden is upon the plaintiff to prove affirmatively ... that the defendant had no reasonable ground’ for commencing action).”

- [Charlotte Hungerford Hospital v. Creed](#), 144 Conn. App. 100, 115, 72 A.3d 1175, 1184 (2013). “The Supreme Court adopted the traditional standard of probable cause applicable to both litigants and their attorneys: ‘[C]ivil probable cause constitutes a bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a man of ordinary caution, prudence and judgment, under the circumstances, in entertaining it.... Although the reasonable attorney is substituted for the reasonable person in actions against attorneys, there is no reason to craft a different standard that essentially would immunize attorneys from vexatious litigation claims by requiring a claimant to prove that 100 out of 100 attorneys would have agreed that the underlying claim was **without merit.**’ (Citations omitted; internal quotation marks omitted).”
- [Byrne v. Burke](#), 112 Conn. App. 262, 275-276, 962 A.2d 825, 834-835 (2009). “[I]f it appears in the action for ... a vexatious suit, that the prosecution properly ended in a judgment of conviction, or that in the civil suit judgment was properly rendered against the defendant therein, such outstanding judgment is, as a general rule, conclusive evidence of the existence of probable cause for instituting the prosecution, or the suit.’ *Frisbie v. Morris*, 75 Conn. 637, 639-40, 55 A. 9 (1903). ‘[I]f the trial court determines that the prior action was objectively reasonable, the plaintiff has failed to meet the threshold requirement of demonstrating an absence of probable cause and the defendant is entitled to prevail.’ (Internal quotation marks omitted.) *Falls Church Group, Ltd. v. Tyler, Cooper & Alcorn, LLP*, supra, 281 Conn. [84] at 99, 912 A.2d 1019. ‘This is true although it is reversed upon appeal and finally terminated in favor of the person against whom the proceedings were brought.... Likewise, a termination of civil proceedings ... by a competent tribunal adverse to the person initiating them is not evidence that they were brought without probable cause.’ 3 Restatement (Second), Torts § 675, comment (b) (1977).”
- [Bernhard-Thomas Building Systems, LLC v. Dunican](#), 286 Conn. 548, 944 A.2d 329 (2008). “We conclude that an application for a prejudgment remedy does not commence a civil action for purposes of a subsequent claim for vexatious litigation. First, there is no service of the requisite signed writ of summons. Additionally, the language of the prejudgment remedy statutes, § 52-278a et seq., in several instances previously set forth herein,

makes it clear that proceedings for prejudgment remedy applications and civil actions are separate and distinct, with a prejudgment remedy application generally preceding the filing of the civil action. Finally, in addition to the differences regarding the process for initiating these two legal proceedings, the purpose of filing a civil action is fundamentally different from the purpose of obtaining a prejudgment remedy. A prejudgment remedy application is brought as a prelude to the filing of a civil action, and is meant to determine whether security should be provided for any judgment ultimately recovered by the plaintiff if he or she is successful on the merits of the civil action. A civil action, in contrast, resolves the merits of the parties' claims, and can be filed irrespective of whether the plaintiff was successful in his or her prior pursuit of a prejudgment remedy. Accordingly, we conclude that the plaintiff cannot base its claim for vexatious litigation on the defendant's filing of an unsuccessful prejudgment remedy application. We therefore affirm the judgment of the Appellate Court."

- [Bernhard-Thomas Building Systems, LLC v. Dunican](#), 100 Conn. App. 63, **65, 918 A.2d 889 (2007)**. "...the defendant, an attorney licensed to practice in Connecticut, filed an application for a prejudgment remedy on behalf of Dunican against the plaintiff in the amount of \$3.5 million. **The court...denied the application.** Dunican withdrew his claims against the plaintiff.

The plaintiff commenced the present action and alleged **that it had expended substantial attorney's fees in response to Dunican's application.**

"Specifically, the plaintiff argues that the court improperly concluded that the application filed by the defendant on behalf of Dunican for a prejudgment remedy did not **constitute a 'prior civil action,'** which is an element of vexatious litigation. **We disagree."** (p. 68)

- [Shaw v. Yarbrough](#), Superior Court, Judicial District of Hartford at Hartford, No. FA 06-4022806 (September 13, 2006) (42 Conn. L. Rptr. 25) (2006 WL 2733828) (2006 Conn. Super. Lexis 2708). "**In** this paternity action, plaintiff seeks double or treble damages from defendant, pursuant to C.G.S. Sec. 52-68, for **the defendant's** having raised in his Answer to her complaint the contention that he is not certain if he is the father of **the plaintiff's** son. Plaintiff asserts that this response in the pleadings and the subsequent necessity of proceeding with genetic testing to establish paternity (which has now been accomplished, with affirmative results), was a vexatious **ploy on defendant's part.... In this case, in the court's** view, there was absolutely no evidence presented that **raised any question that the child's** father was the defendant, however, because of the rights afforded under C.G.S. Sec. 46b-160, **the 'without probable cause'**

requirement of C.G.S. 52-568 cannot be met in this instance and the plaintiff's motion is denied."

- [DeLaurentis v. New Haven](#), 220 Conn. 225, 249, 597 A.2d 807, 819 (1991). "On the facts of this case, we conclude that DeLaurentis was not barred from bringing a vexatious suit action against the mayor simply because it is based upon a proceeding that did not take place in a courtroom. The removal proceedings prescribed by the New Haven city charter might have resulted in depriving DeLaurentis of his position as a parking authority commissioner. Whether or not his interest in retaining that unpaid position is of constitutional magnitude, a claim rejected by the federal district court, it is a "legally protected interest" in the sense that the city charter restricts the mayor's right to deprive him of it. Compare *Sansone v. Clifford*, 219 Conn. 217, 230-31, 592 A.2d 931 (1991)."

**WEST KEY NUMBERS:**

- **Action**
  - I. Grounds and conditions precedent, #1-15
  - 9. Unnecessary or vexatious actions.
- **Injunction**
  - 1168. Abusive, vexatious, or harassing litigation.
  - 1169. —In general.
  - 1170. —Particular cases.
- **Malicious Prosecution**
  - 25. Civil actions and proceedings.
  - (1). In general.

**ENCYCLOPEDIAS:**

- Robin Miller, Annotation, *Validity, Construction, and Application of State Vexatious Litigant Statutes*, 45 ALR6th 493 (2009).
- 42 *Am. Jur. 2d* Injunctions (2020).
  - III. Kinds of Rights Protected and Matters Controllable
  - C. Personal Rights
  - 1. In general
  - b. Particular Rights and Injuries
  - H. Injunction Against Institution or Maintenance of Judicial Proceedings
  - 1. In general
  - b. Grounds and Occasions for Relief
  - § 182. Vexatious, frivolous, or oppressive litigation
- 52 *Am. Jur. 2d* Malicious Prosecution (2011).
  - I. In General
  - II. Elements of the Cause of Action
  - III. Parties
  - IV. Defenses
  - V. Damages
  - VI. Practice and Procedure
- 32 *COA2d* 131 (2006), *Cause of Action for the Malicious Prosecution of Civil Actions*.

- 1A *C.J.S.* Actions (2016).
  - II. Cause or Right of Action
    - A. General Considerations
      - 4. Other Actions and Considerations
        - § 72. Unnecessary, vexatious, or frivolous actions

### **TREATISES:**

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- *Connecticut Law of Torts, 4th ed.*, by Douglass B. Wright et al., 2018, Atlantic Law Book Company, with 2020 supplement.
  - Chapter XVIII. Vexatious Litigation
    - § 161. Introduction
    - § 163. Vexatious suit
- 3A *Connecticut Practice Series: Civil Practice Forms 4th*, by Joel M. Kaye and Wayne D. Efron, 2004, with 2020 supplement, Thomson West (also available on Westlaw).
  - Authors' Commentary for Form 804.11**
- 12 *Connecticut Practice Series: Connecticut Unfair Trade Practices, Business Torts and Antitrust*, Robert M. Langer et al., 2020, Thomson West, (also available on Westlaw).
  - Chapter 4. CUTPA and Related Business Torts
    - § 4.15. Malicious prosecution, vexatious litigation, and abuse of process
- 16A *Connecticut Practice Series: Connecticut Elements of an Action*, Thomas B. Merritt, 2020, Thomson West (also available on Westlaw).
  - Chapter 15. Malicious Prosecution/Vexatious Litigation
    - § 15:1. Elements of action
    - § 15:2. Authority
    - § 15:3. Remedies—Compensatory damages
    - § 15:4. —Punitive or exemplary damages
    - § 15:5. Limitations of actions: Statute of limitations
    - § 15:6. Defenses—Limitations
    - § 15:7. —Existence of probable cause
    - § 15:8. —Advice of counsel
    - § 15:9. Checklist
- *Connecticut Torts: The Law and Practice*, by Frederic S. Ury and Neal L. Moskow, Matthew Bender, 2d ed., 2015, with 2020 supplement.
  - Chapter 12. Bringing Intentional Tort Claims
    - § 12.03. Bringing a claim for misuse of the legal system
      - [1] Distinguishing among malicious prosecution, vexatious suits, and abuse of process
      - [2] Historical perspective of cause of action relating to misuse of the legal system
      - [3] Proving the required elements of malicious prosecution and vexatious suits
      - [4] Establishing the lack of probable cause in the underlying action

[5] Effect of a criminal conviction on a malicious prosecution action

**[6] How does a private person “initiate criminal proceedings” for the purposes of malicious prosecution**

[7] Establishing that the defendant acted with **“malice” in the underlying action**

[8] Establishing that the underlying action terminated in the malicious **prosecution/vexatious litigation plaintiff’s favor**

[9] Recovering damages in a malicious prosecution/vexatious litigation suit

[10] Defending a malicious prosecution or vexatious litigation suit

[17] Checklist for malicious prosecution/vexatious litigation claims

- ***Encyclopedia of Connecticut Causes of Action***, Daniel J. Kris and Michael Taylor, 2020 edition, Connecticut Law Tribune.
  - Part 1. Common Law Causes of Action
    - 1V-2. Vexatious Litigation (Common-Law)
  - Part 2. Statutory Causes of Action (Traditional)
    - 2V-1. Vexatious Litigation (Conn. Gen. Stat. § 52-568)
  
- 1 ***Harper, James, & Gray on Torts 3d***, by Fowler V. Harper, et al., 2006, with 2020 supplement, Aspen Publishers, Inc.
  - Chapter 4. Malicious Prosecution and Abuse of Process
    - § 4.8. Malicious civil litigation
  
- ***The Law of Torts 2d***, by Dan B. Dobbs, et al., 2011, with 2020 supplement, Thomson West (also available on Westlaw).
  - Chapter 46. Process rights: Misusing and denying judicial Process
    - § 592. Wrongful civil litigation and tactics
    - § 593. Special-injury or special-grievance requirement
    - § 596. Damages
  
- ***Restatement of the Law Second, Torts***.
  - Chapter 30. Wrongful Use of Civil Proceedings
    - § 674. General principle
    - § 675. Existence of probable cause
    - § 676. Propriety of purpose
    - § 677. Civil proceedings causing an arrest or a deprivation of property
    - § 678. Proceedings alleging insanity or insolvency
    - § 679. Repetition of civil proceedings
    - § 680. Proceedings before an administrative board
    - § 681. Damages
      - § 681A. Burden of proof
      - § 681B. Functions of court and jury

- *Tort Remedies in Connecticut*, by Richard L. Newman & Jeffrey S. Wildstein, 1996, with 2014 supplement, Michie.  
Chapter 12. Intentional torts
  - § 12-3. Malicious prosecution and vexatious suit
    - (a). Introduction
    - (b). History
    - (c). Elements
    - (d). Damages
    - (e). Conn. Gen. Stat. § 52-226a
    - (f). Defenses

**LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- Sarah Gruber, *A Lawyer's Guide to Vexatious Litigation in Connecticut*, 88 Connecticut Bar Journal 184 (2015).
- Kenneth Rosenthal, *Vexatious Litigation in Connecticut: Malicious Prosecution of Civil Actions, Probable Cause, and Lawyer Liability*, 84 Connecticut Bar Journal 255 (2010).

Figure 1: Vexatious Suit

**Vexatious Suit**

1. On (*date*) the defendant in this action commenced a civil suit against the plaintiff in this action claiming (*state claim*) which was returnable to the superior court for the judicial district of (*name*) on (*return date*).
2. On (date), judgment in that action was rendered in favor of the plaintiff in this action to recover of the defendant in this action \$            costs of suit.
3. That action was commenced and prosecuted by the defendant in this action without probable cause, and with a malicious intent unjustly to vex and trouble him.
4. The plaintiff in this action necessarily expended in the defense of that action a much larger sum than the costs in that suit; to wit: \$            .

The plaintiff claims, by force of statute in such case provided, to recover treble damages.

(P.B. 1963, Form 205; see Gen. Stat., § 52-568)

Table 1: Determining Existence of Probable Cause in Vexatious Litigation Action against an Attorney

### Determining Existence of Probable Cause in Vexatious Litigation Action against an Attorney in Connecticut

"We agree with the supreme courts of California and Michigan that an attorney's subjective belief in the tenability of a claim and the **extent of an attorney's** investigation and research have no place in determining the existence of probable cause in a vexatious litigation action against an attorney and that the presence or absence of probable cause should be judged by an objective standard. That said, we nevertheless agree with — and, therefore, adopt — the Indiana Court of Appeals' articulation of an **objective** standard<sup>8</sup> of probable cause: '[T]he objective standard which should govern the reasonableness of an attorney's action in instituting litigation for a client is whether the claim merits litigation against the defendant in question on the basis of the facts known to the attorney when suit is commenced. The question is answered by determining that **no** competent and reasonable attorney familiar with the law of the forum would consider that the claim was worthy of litigation on the basis of the facts known by the attorney who **instituted suit.**' (Emphasis added.) [Wong v. Tabor](#), supra, 422 N.E.2d [1279,] 1288 [(Ind. App. 1981)]. We are mindful that '[r]easonable lawyers can differ, some seeing as meritless suits which others believe have merit, and some seeing as totally and completely without merit suits which others see as only marginally meritless. Suits which all reasonable lawyers agree totally lack merit — that is, those which lack probable cause — are the least meritorious of all meritless suits. Only this subgroup of meritless suits present no probable cause.' (Emphasis in original; internal quotation marks omitted.) [Roberts v. Sentry Life Ins.](#), 76 Cal. App. 4th 375, 382, 90 Cal. Rptr. 2d 408 (1999), review denied, 2000 Cal. LEXIS 1059 (February 16, 2000). 'This lenient standard for bringing a civil action reflects the important public policy of avoiding the chilling of novel or debatable legal claims and allows attorneys and litigants to present issues that are arguably correct, **even if it is extremely unlikely that they will win. . . .**' (Internal quotation marks omitted.) [Padres L.P. v. Henderson](#), 114 Cal. App. 4th 495, 517, 8 Cal. Rptr. 3d 584 (2003), review denied, 2004 Cal. LEXIS 3174 (April 14, 2004)." [Falls Church Group v. Tyler, Cooper and Alcorn](#), 89 Conn. App. 459, 473-474, 874 A.2d 266 (2005), *aff'd* [Falls Church Group, Ltd. v. Tyler, Cooper and Alcorn, LLP](#), 281 Conn. 84, 912 A.2d 1019 (2007).

<sup>8</sup>"We caution that although we adopt the Indiana Court of Appeals' formulation of an **objective** standard of probable cause, we **do not** adopt its "subjective belief" component. The presence or absence of probable cause, we reiterate, should be judged by an objective inquiry."

## Section 2: Malicious Prosecution in Connecticut

A Guide to Resources in the Law Library

### **SCOPE:**

Bibliographic resources relating to the tort of malicious prosecution in Connecticut.

### **SEE ALSO:**

- [Frivolous Lawsuits in Connecticut](#)
- Vexatious Litigation in Connecticut ([Section 1](#))
- Abuse of Process in Connecticut ([Section 3](#))

### **DEFINITIONS:**

- “An action for malicious prosecution against a private person requires a plaintiff to prove that: (1) the defendant initiated or procured the institution of criminal proceedings against the plaintiff; (2) the criminal proceedings have terminated in favor of the plaintiff; (3) the defendant acted without probable cause; and (4) the defendant acted with malice, primarily for a purpose other than that of bringing an offender to justice.’ [McHale v. W.B.S. Corp.](#), 187 Conn. 444, 447, 446 A.2d 815 (1982) . . . the requirement that the plaintiff establish that the defendant initiated or procured the institution of criminal proceedings against him, is the only element that distinguishes the tort of malicious prosecution from the tort of vexatious litigation . . . Although the required showing for both torts essentially is the same, there is a slight difference in that a plaintiff in a malicious prosecution action must show initiation of the proceedings by the defendant.” [Bhatia v. Debek](#), 287 Conn. 397, 404-405, 948 A.2d 1009, 1017 (2008).

### **FORMS:**

- *3A Connecticut Practice Series: Civil Practice Forms 4th*, by Joel M. Kaye and Wayne D. Efron, 2004, with 2020 supplement, Thomson West (also available on Westlaw).  
Form 804.10. Malicious Prosecution
- *16A Connecticut Practice Series: Connecticut Elements of an Action*, Thomas B. Merritt, 2020, Thomson West (also available on Westlaw).  
Chapter 15. Malicious Prosecution/Vexatious Litigation  
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Chapter 12. Bringing Intentional Tort Claims  
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[17] Checklist for malicious prosecution/vexatious litigation claims  
[19] Forms for malicious prosecution/vexatious litigation claims

Form 12.03.1 Complaint—malicious prosecution  
and vexatious litigation

- *17 Am. Jur. Pleading and Practice Forms*, Malicious Prosecution (2012).
  - § 3. Checklist—Drafting complaint, petition, or declaration in action for malicious prosecution of prior civil action
  - § 4. Complaint, petition, or declaration— For malicious prosecution of prior civil action—General form

**CASES:**

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- [Giannamore v. Shevchuk](#), 108 Conn. App. 303, 318-319, 947 A.2d 1012, 1021 (2008). **“Our Supreme Court has stated: ‘In a malicious prosecution action, the defendant is said to have acted with malice if he [or she] acted primarily for an improper purpose; that is, for a purpose other than that of securing the proper adjudication of the claim on which [the proceedings] are based....’ (Citation omitted; internal quotation marks omitted.) *Mulligan v. Rioux*, supra, 229 Conn. at 732, 643 A.2d 1226; see also 3 Restatement (Second), Torts, Malicious Prosecution § 668, p. 438 (1977). Furthermore, we note that ‘[m]alice may be inferred from lack of probable cause.’ *Falls Church Group, Ltd. v. Tyler, Cooper & Alcorn, LLP*, supra, 281 Conn. at 94, 912 A.2d 1019. If the evidence supports a finding of a lack of probable cause, then the fact finder reasonably may conclude that the defendant acted with malice. See *Mulligan v. Rioux*, supra, at 746, 643 A.2d 1226.”**
- [DeLaurentis v. New Haven](#), 220 Conn. 225, 250, 597 A.2d 807, 820 (1991). **“Courts have taken three approaches to the ‘termination’ requirement. The first, and most rigid, requires that the action have gone to judgment resulting in a verdict of acquittal, in the criminal context, or no liability, in the civil context . . . The third approach, while nominally adhering to the ‘favorable termination’ requirement, in the sense that any outcome other than a finding of guilt or liability is favorable to the accused party, permits a malicious prosecution or vexatious suit action whenever the underlying proceeding was abandoned or withdrawn without consideration, that is, withdrawn without either a plea bargain or a settlement favoring the party originating the action.”**
- [Colli v. Kamins](#), 39 Conn. Supp. 75, 76, 468 A.2d 295 (1983). **“An abandonment of a criminal proceeding, so far as the plaintiff’s right to prevail is concerned, is the equivalent of its successful termination. *Shaw v. Moon*, 117 Or. 558, 562, 245 P. 318 (1926). The rule governing the kindred tort of malicious prosecution is that it is sufficient if the defendant in the underlying prosecution was ‘discharged without a trial under circumstances amounting to an abandonment of the prosecution without request from or by arrangement with him.’ See v. *Gosselin*, 133 Conn. 158, 160, 48 A.2d 560 (1946).”**

**WEST KEY  
NUMBERS:**

- ***Malicious Prosecution***
  - 0.5-14. Nature and commencement of prosecution
  - 25. Civil actions and proceedings.
  - 26-33. Malice.
  - 34-37. Termination of prosecution.
  - 38-77. Actions.

**ENCYCLOPEDIAS:**

- 52 ***Am. Jur.*** 2d ***Malicious Prosecution*** (2011).
  - I. In General
  - II. Elements of the Cause of Action
  - III. Parties
  - IV. Defenses
  - V. Damages
  - VI. Practice and Procedure
- Cause of Action for the Malicious Prosecution of Civil Actions, 32 ***COA2d*** 131 (2006).
- 54 ***C.J.S.*** ***Malicious Prosecution or Wrongful Litigation*** (2020).
  - I. In General
  - II. Elements of the Cause of Action for Malicious Prosecution
  - III. Defenses to Cause of Action for Malicious Prosecution
  - IV. Persons Entitled to Sue and Persons Liable
  - V. Actions
- Jimmie E. Tinsley, J.D., ***Malicious Prosecution*** 7 ***Am. Jur. Proof of Facts 2d*** 181 (1975).
  - § 5. Proceedings on which action may be based—Civil action
- ***Connecticut Law of Torts, 4th ed.***, by Douglass B. Wright et al., 2018, Atlantic Law Book Company, with 2020 supplement.
  - Chapter XVIII. Vexatious Litigation
    - § 161. Introduction
    - § 162. Malicious prosecution
- 3A ***Connecticut Practice Series: Civil Practice Forms 4th***, by Joel M. Kaye and Wayne D. Effron, 2004, with 2020 supplement, Thomson West (also available on Westlaw).  
**Authors' Commentary for Form 804.10**
- 12 ***Connecticut Practice Series: Connecticut Unfair Trade Practices, Business Torts and Antitrust***, Robert M. Langer et al., 2020, Thomson West, (also available on Westlaw).
  - Chapter 4. CUTPA and Related Business Torts
    - § 4.15. Malicious prosecution, vexatious litigation, and abuse of process
- 16A ***Connecticut Practice Series: Connecticut Elements of an Action***, Thomas B. Merritt, 2020, Thomson West (also available on Westlaw).

**TREATISES:**

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## Chapter 15. Malicious Prosecution/Vexatious Litigation

§ 15:1. Elements of action

§ 15:2. Authority

§ 15:3. Remedies—Compensatory damages

§ 15:4. —Punitive or exemplary damages

§ 15:5. Limitations of actions: Statute of limitations

§ 15:6. Defenses—Limitations

§ 15:7. —Existence of probable cause

§ 15:8. —Advice of counsel

§ 15:9. Checklist

- ***Connecticut Torts: The Law and Practice***, by Frederic S. Ury and Neal L. Moskow, Matthew Bender, 2d ed., 2015, with 2020 supplement.

### Chapter 12. Bringing Intentional Tort Claims

§ 12.03. Bringing a claim for misuse of the legal system

- [1] Distinguishing among malicious prosecution, vexatious suits, and abuse of process
- [2] Historical perspective of cause of action relating to misuse of the legal system
- [3] Proving the required elements of malicious prosecution and vexatious suits
- [4] Establishing the lack of probable cause in the underlying action
- [5] Effect of a criminal conviction on a malicious prosecution action
- [8] Establishing that the underlying action terminated in the malicious prosecution/vexatious litigation plaintiff's favor
- [9] Recovering damages in a malicious prosecution/vexatious litigation suit
- [10] Defending a malicious prosecution or vexatious litigation suit
- [17] Checklist for malicious prosecution/vexatious litigation claims

- ***Encyclopedia of Connecticut Causes of Action***, Daniel J. Krisch and Michael Taylor, 2020 edition, Connecticut Law Tribune.

Part 1. Common Law Causes of Action

1M-1. Malicious Prosecution

- ***1 Connecticut Actions and Remedies, Tort Law***, Daniel C. Pope, 1996, Butterworth Legal Publishers.

### Chapter 7. Malicious Prosecution

A. Introduction

§ 7:01. Overview

B. Essential elements

§ 7:02. Essential elements

§ 7:03. Initiation of prior criminal proceeding

§ 7:04. Initiation of prior civil proceeding

§ 7:05. Lack of probable cause

§ 7:06. Malice

- § 7:07. Favorable termination
- C. Remedies and damages
  - § 7:08. In general
- D. Defenses
  - § 7:09. In general
- E. Pleading and practice
  - § 7:10. In general
- F. Research aids
  - § 7:11. Bibliography

- 1 *Harper, James, & Gray on Torts 3d*, by Fowler V. Harper, et al., 2006, with 2020 supplement, Aspen Publishers, Inc.
  - Chapter 4. Malicious Prosecution and Abuse of Process
    - § 4.1. General principles involved; What constitutes malicious prosecution
    - § 4.2. The interests involved
    - § 4.3. Initiation of criminal proceedings
    - § 4.4. Favorable termination of proceedings
    - § 4.5. Probable cause
    - § 4.6. Malice
    - § 4.7. Damages
    - § 4.10. Other malicious and wrongful exposure to government action
    - § 4.11. Policy factor in false arrest, malicious prosecution, defamation: Their relationship to each other
    - § 4.12. Policy factor in false arrest, malicious prosecution, defamation: The absolute defense in all three
  
- *The Law of Torts 2d*, by Dan B. Dobbs, et al., 2011, with 2020 supplement, Thomson West (also available on Westlaw).
  - Chapter 46. Process rights: Misusing and denying judicial Process
    - § 586. Elements of malicious prosecution
    - § 587. Malicious prosecution—Instigating or continuing the prosecution or proceeding
    - § 588. —Want of probable cause
    - § 589. Improper purpose or “malice”**
    - § 590. Termination of the prosecution
    - § 591. Special defenses
    - § 593. Special-injury or special-grievance requirement
    - § 596. Damages
  
- *Restatement of the Law Second, Torts*.
  - Chapter 29. Wrongful Prosecution of Criminal Proceedings (Malicious Prosecution)
    - §§ 653-657. General principles
    - §§ 658-661. Termination of proceedings
    - §§ 662-667. Probable cause
    - §§ 668-669A. Purpose
    - §§ 670-671. Damages

§§ 672-673. Burden of proof and function of court and jury

- ***Restatement of the Law Third, Torts.***  
Chapter 4. Misuse of Legal Procedure
  - § 21. Malicious prosecution
  - § 22. Probable cause to initiate criminal proceedings
  - § 23. Favorable termination of criminal proceedings
  - § 24. Wrongful use of civil proceedings
  - § 25. Probable cause to initiate civil proceedings
  - § 26. Abuse of process
  
- ***Tort Remedies in Connecticut, by Richard L. Newman & Jeffrey S. Wildstein, 1996, with 2014 supplement, Michie.***  
Chapter 12. Intentional Torts
  - § 12-3. Malicious prosecution and vexatious suit
    - (a). Introduction
    - (b). History
    - (c). Elements
    - (d). Damages
    - (e). Conn. Gen. Stat. § 52-226a
    - (f). Defenses

# Section 3: Abuse of Process in Connecticut

A Guide to Resources in the Law Library

**SCOPE:** Bibliographic resources relating the tort of abuse of process in Connecticut.

**SEE ALSO:**

- [Frivolous Lawsuits in Connecticut](#)
- Vexatious Litigation in Connecticut ([Section 1](#))
- Malicious Prosecution in Connecticut ([Section 2](#))

**DEFINITIONS:**

- “Abuse of process is the misuse of process regularly issued to accomplish an unlawful ulterior purpose. The gravamen of the complaint is the use of process for a purpose not justified by law. The distinction between malicious prosecution or vexatious suit and abuse of process as tort actions is that in the former the wrongful act is the commencement of an action without legal justification, and in the latter it is in the subsequent proceedings, not in the issue of process but in its abuse. The distinction in the elements essential for recovery in each tort is that in the action for abuse of process the plaintiff is not bound to allege or prove the termination of the original proceeding nor, in most jurisdictions, the want of probable cause, while both of those must be proven in **an action for malicious prosecution or vexatious suit.**”  
[Schaefer v. O. K. Tool Co., Inc.](#), 110 Conn. 528, 532-533, 148 A. 330, 332-333 (1930).

**PRACTICE BOOK:**

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- [Conn. Practice Book](#) (2020).
  - [Chapter 4. Pleadings](#)
    - § 4-2. Signing of pleadings
  - [Chapter 10. Pleadings](#)
    - § 10-5. Untrue allegations or denials
  - [Chapter 24. Small Claims](#)
    - § 24-33. Costs in small claims
  - [Chapter 85. Sanctions](#)
    - § 85-2. Other actions subject to sanctions
      - (5). Presentation of a frivolous appeal or frivolous issue on appeal
      - (6) Presentation of a frivolous defense or defenses on appeal.
    - § 85-3. Procedure on sanctions

**FORMS:**

- 1 Pt. *1 Am. Jur. Pleading and Practice Forms*, Abuse of Process (2018).
  - § 3. Checklist—Drafting a complaint, petition, or declaration in an action for abuse of process
- 16 Connecticut Practice Series: Connecticut Elements of an Action, Thomas B. Merritt, 2020, Thomson West, (also available on Westlaw).
  - Chapter 7. Abuse of Process
    - § 7:9. Sample trial court documents—Sample complaint

§ 7:10. —Sample answer containing affirmative defense

- **Connecticut Torts: The Law and Practice**, by Frederic S. Ury and Neal L. Moskow, Matthew Bender, 2d ed., 2015, with 2020 supplement.

Chapter 12. Bringing Intentional Tort Claims

§ 12.03. Bringing a claim for misuse of the legal system

[18] Checklist for abuse of process claims

[20] Forms for abuse of process claims

Form 12.03.2 Complaint— abuse of process

## **JURY INSTRUCTIONS:**

- [Connecticut Judicial Branch Civil Jury Instructions](#)  
Part 3: Torts  
3.13. Intentional Torts  
3.13-8. Abuse of Process (rev. to January 1, 2008)

## **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Williams v. Bean](#), United States District Court, Docket No. 16-cv-1633 (VAB), (D. Conn. November 8, 2017), 2017 WL 5179231, 2017 U.S. Dist. LEXIS 184829. **“The Williamses argue that the Beans’ counterclaim for abuse of process is premature absent disposition of the underlying litigation. Pls.’ Br. 5. The Beans argue that prior resolution of the underlying litigation is not an element of abuse of process at common law. Defs.’ Resp. 4-5. The Court agrees with the Williamses.**

The Williams’ motion to dismiss the claim is granted.

Under Connecticut law, “[a]n action for abuse of process lies against any person using a legal process against another in an improper manner or to accomplish a purpose for which it was not designed.” *Passaro-Henry v. Allstate Ins. Co.*, No. 3:10-CV-450 JCH, 2010 WL 5174405, at \*3 (D. Conn. Dec. 15, 2010) (quoting *Larobina v. McDonald*, 274 Conn. 394, 403 (2005)); *Rogan v. Rungee*, 165 Conn. App. 209, 220 (2016). Central to an action for abuse of process is the use of legal process “against another [party] primarily to accomplish a purpose for which it is not designed. Abuse of process requires conduct (1) occurring after the issuance of process and (2) intended primarily to accomplish a purpose for which the process is not designed.” *Passaro-Henry*, 2010 WL 5174405, at \*3 (internal citations omitted and quotation marks omitted); see also *Doctor’s Assocs., Inc. v. Weible*, 92 F.3d 108, 114 (2d Cir. 1996) (“[L]iability for abuse of process lies only when the offending party overtly misuses the process once the proceeding has begun.”).

“Although abuse of process claims do not include favorable termination as an essential element, the cause of action is still considered premature until the underlying litigation has been completed.” *MacDermid v. Leonetti*,

158 Conn. App. 176, 184 (2015) (citing *Larobina v. McDonald*, 274 Conn. 394, 407–08 (2005)).”

- [Rogan v. Rungee](#), 165 Conn. App. 209, 217, 2016 WL 1637725 (2016). “Damages suffered through an abuse of legal process not malicious must be compensatory, that is compensation for the natural consequences resulting, which would include injury to the feelings because of the humiliation, disgrace or indignity suffered, together with **injury to the person and physical suffering....**’ *McGann v. Allen*, 105 Conn. 177, 184, 134 A. 810 (1926). Thus, for the court to properly award emotional distress damages for abuse of process, the abuse of process must have **caused the defendant’s** emotional distress. Whether such causation exists is a question of fact. See *Burton v. Stamford*, 115 Conn.App. 47, 87, 971 A.2d 739, cert. denied, 293 Conn. 912, 978 A.2d 1108 (2009).”
- [Larobina v. McDonald](#), 274 Conn. 394, 406-407, 876 A.2d 522, 530 (2005). “...although the definition of process may be broad enough to cover a wide range of judicial procedures, to prevail on an abuse of process claim, the plaintiff must establish that the defendant used a judicial process for an improper purpose.”
- [Varga v. Pareles](#), 137 Conn. 663, 667, 81 A.2d 112, 115 (1951). “One who uses a legal process against another in an improper manner or to accomplish a purpose for which it was not designed is liable to the other for the injury caused thereby. See Restatement, 3 Torts 682. In the former instance, the action lies, for example, against anyone who uses oppression or unreasonable force in the service of process, or causes it to be used, irrespective of his motive in so doing.”

**WEST KEY NUMBERS:**

- *Process*
  - IV. Abuse of Process
    - (A) In General, #172-199
    - (B) Actions and Proceedings, #200-213

**ENCYCLOPEDIAS:**

- 1 *Am. Jur. 2d* Abuse of Process (2016).
  - I. Nature and Elements of Action
    - A. In General
      - § 3. Distinctions from malicious prosecution and malicious use of process
  - II. Actionable Abuses of Particular Processes
  - III. Persons Liable
  - IV. Actions
- 52 *Am. Jur. 2d* Malicious Prosecution (2011).
  - I. In General
    - § 3. Distinctions
  - II. Elements of the Cause of Action
  - III. Parties
  - IV. Defenses
  - V. Damages

## VI. Practice and Procedure

- *Cause of Action for Abuse of Process*, 33 COA2d 465 (2007).
- 72 *C.J.S.* Process (2018).
  - X. Abuse or Malicious Use of Process
    - A. In General
    - B. Elements of Abuse of Process
    - C. Actions
- *Connecticut Law of Torts, 4th ed.*, by Douglass B. Wright et al., 2018, Atlantic Law Book Company, with 2020 supplement.
  - Chapter XVIII. Vexatious Litigation
    - § 161. Introduction
    - § 164. Abuse of process
- 12 *Connecticut Practice Series: Connecticut Unfair Trade Practices, Business Torts and Antitrust*, Robert M. Langer et al., 2020, Thomson West, (also available on Westlaw).
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    - § 4.15. Malicious prosecution, vexatious litigation, and abuse of process
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    - § 7:4. —Punitive or exemplary damages
    - § 7:5. Limitations of actions: Statute of limitations
    - § 7:6. Defenses—Limitations
    - § 7:7. —Lack of issuance of process
    - § 7:8. Checklist
- *Connecticut Torts: The Law and Practice*, by Frederic S. Ury and Neal L. Moskow, Matthew Bender, 2d ed., 2015, with 2020 supplement.
  - Chapter 12. Bringing Intentional Tort Claims
    - § 12.03. Bringing a claim for misuse of the legal system
      - [1] Distinguishing among malicious prosecution, vexatious suits, and abuse of process
      - [11] Distinguishing abuse of process from vexatious suit and malicious prosecution
      - [12] Proving the required elements of an abuse of process claim
      - [13] Holding attorneys liable for abuse of process
      - [14] Recovering damages in abuse of process cases
      - [15] Pleading an abuse of process count

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[16] Defending an abuse of process suit  
[18] Checklist for abuse of process claims

- ***Encyclopedia of Connecticut Causes of Action***, Daniel J. Krisi and Michael Taylor, 2020 edition, Connecticut Law Tribune.  
Part 1. Common Law Causes of Action  
1A-1. Abuse of Process
- 1 ***Connecticut Actions and Remedies***, Tort Law, Daniel C. Pope, 1996, Butterworth Legal Publishers.  
Chapter 8. Abuse of Process
  - A. Introduction
    - § 8:01. Overview
  - B. Essential elements
    - § 8:02. Elements
    - § 8:03. Justifiable initiation or issuance
    - § 8:04. Perversion of lawful process
  - C. Remedies and damages
    - § 8:05. In general
  - D. Defenses
    - § 8:06. In general
  - E. Pleading and practice
    - § 8:07. In general
  - F. Research aids
    - § 8:08. Bibliography
- 1 ***Harper, James, & Gray on Torts 3d***, by Fowler V. Harper, et al., 2006, with 2020 supplement, Aspen Publishers, Inc..  
Chapter 4. Malicious Prosecution and Abuse of Process  
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- ***The Law of Torts 2d***, by Dan B. Dobbs, et al., 2011, with 2020 supplement, Thomson West (also available on Westlaw).  
Chapter 46. Process rights: Misusing and denying judicial Process
  - § 594. Abuse of process
  - § 596. Damages
- ***Restatement of the Law Second, Torts***.  
Chapter 31. Abuse of Process  
§ 682. General principle
- ***Tort Remedies in Connecticut***, by Richard L. Newman & Jeffrey S. Wildstein, 1996, with 2014 supplement, Michie.  
Chapter 12. Intentional torts
  - § 12-4. Abuse of process
    - (a). Elements
    - (b). Damages
    - (c). Pleading
    - (d). Defenses